

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SAUL FARVELA,

Plaintiff,

v.

MATOUSEK, *et al.*,

Defendants.

Case No. 2:21-cv-01720-CDS-DJA

ORDER

I. DISCUSSION

On March 11, 2022, this Court entered a screening order dismissing Plaintiff's Complaint and giving him thirty days to file an amended complaint. ECF No. 10 at 12-13. The Court noted that if Plaintiff failed to timely file an amended complaint, this action would be "dismissed without prejudice for failure to state a claim." *Id.* at 13. The Court also deferred ruling on Plaintiff's application to proceed *in forma pauperis*. *Id.* at 12.

The deadline to amend expired, and Plaintiff did not file an amended complaint. Accordingly, on April 20, 2022, the Court dismissed this action without prejudice. ECF No. 13 at 3. The Court also granted Plaintiff's application to proceed *in forma pauperis*. *Id.* The Court explained that, although Plaintiff was not required to "pay an initial installment fee, prepay fees or costs, or provide security for fees or costs," he was "still required to pay the full \$350 filing fee under 28 U.S.C. § 1915." *Id.*

On July 11, 2022, Plaintiff filed a "Notice to the Court," stating that the Court erred in assessing the full filing fee because this action was "dismissed without prejudice" for failure to file an amended complaint. ECF No. 15. Cited this alleged error, Plaintiff requests that the Court waive the filing fee. *Id.*

The Court construes Plaintiff's "Notice to the Court" as a motion for waiver of the filing fee. Plaintiff's construed motion is denied. When a prisoner files a civil action, he "may be granted leave to proceed [*in forma pauperis*], but unlike non-incarcerated civil litigants, he remains

1 obligated to pay the entire [filing] fee in installments, regardless of whether his action is
2 ultimately dismissed.” *Turner v. San Diego Cnty.*, No. 14-cv-1965, 2014 WL 5800595, at *1 (S.D. Cal.
3 Nov. 7, 2014) (citing 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir.
4 2002)). This rule applies where, as here, a prisoner seeking to proceed *in forma pauperis* files a
5 complaint, that complaint is dismissed without prejudice and with leave to amend, and the
6 prisoner fails to file an amended complaint. *See, e.g., Hancock v. Garcia*, No. 04-cv-2389, 2005 WL
7 8167141, at *3 (S.D. Cal. Feb. 23, 2005) (“If Plaintiff fails to amend, or if his Amended Complaint
8 still fails to state a claim, he will be required to pay the entire [] civil filing fee, pursuant to the
9 installment provisions of 28 U.S.C. § 1915(b)(1).”). Accordingly, there is no basis to waive the
10 filing fee here. The full filing fee remains due in installments despite the dismissal of this action
11 without prejudice.

12 II. CONCLUSION

13 For the foregoing reasons, it is ordered that Plaintiff’s construed motion for waiver of the
14 filing fee (ECF No. 15) is denied.

15 It is further ordered that the full \$350 filing fee remains due in installments in accordance
16 with the Court’s order dismissing this action without prejudice (ECF No. 13).

17
18 DATED this 14th day of July, 2022.

19
20
21 
22 UNITED STATES DISTRICT JUDGE
23
24
25
26
27
28